

ENTERED

September 30, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARK ANTHONY SANCHEZ,

Petitioner,

VS.

WARDEN MELISSA RIOS,

Respondent.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 2:19-CV-400

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

On August 12, 2020, United States Magistrate Judge Julie K. Hampton issued her Memorandum and Recommendation, recommending that Respondent's construed motion for summary judgment be granted, and the § 2241 petition be dismissed for lack of jurisdiction. (M&R, D.E. 17). The parties were provided proper notice of, and opportunity to object to, the Magistrate Judge's Memorandum and Recommendation. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); General Order No. 2002-13. No objections have been timely filed.

When no timely objection to a magistrate judge's memorandum and recommendation is filed, the district court need only satisfy itself that there is no clear error on the face of the record and accept the magistrate judge's memorandum and recommendation. *Guillory v. PPG Industries, Inc.*, 434 F.3d 303, 308 (5th Cir. 2005) (citing *Douglass v. United Services Auto Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996)).


In the M&R, the Magistrate Judge construes Respondent's filing as a motion for summary judgment—for the first time—and considers Respondent's evidence in recommending that the motion be granted. According to Federal Rule of Civil Procedure 12(d), “If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. *All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.*” (emphasis added).

The Fifth Circuit has held that the notice requirement may be met by constructive notice, apparent when evidence is submitted with the motion, making it susceptible to conversion to a Rule 56 motion. And the requirement of time to respond with evidence is met if it is consistent with that afforded to respond to a summary judgment motion. *Isquith for & on Behalf of Isquith v. Middle S. Utilities, Inc.*, 847 F.2d 186, 196 (5th Cir. 1988). Petitioner had such constructive notice. In addition, the M&R provided actual notice. This Court has afforded Petitioner more than the 21 days ordinarily provided in Local Rule 7 to respond to the motion as a summary judgment motion or to object on any basis related to notice and opportunity to submit evidence. Petitioner has failed to offer evidence or object on the basis of any difficulty in doing so. For this reason, the Court deems the conversion to Rule 56 appropriate.

Having reviewed the findings of fact and conclusions of law set forth in the Magistrate Judge's M&R (D.E. 17), and all other relevant documents in the record, and finding no clear error, the Court **ADOPTS** as its own the findings and conclusions of the

Magistrate Judge. Accordingly, the construed motion for summary judgment (D.E. 14) is **GRANTED** and this action is **DISMISSED** for lack of jurisdiction.

ORDERED this 30th day of September, 2020.



NEELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE